

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 280 of 1990

with

CRIMINAL APPEAL No 281 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?  
(No. 1 to 5 NO)

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STATE OF GUJARAT

Versus

DIGVIJAYSINH JETISINH CHAUHAN

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Appearance:

1. Criminal Appeal No. 280 of 1990

MR. K.C. SHAH, LD.PUBLIC PROSECUTOR for Petitioner

MR MUKUND M DESAI for Respondent No. 1

2. Criminal AppealNo 281 of 1990

MR. K.C. SHAH, LD.PUBLIC PROSECUTOR for Petitioner

MR MUKUND M DESAI for Respondent No. 1

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 04/08/97

## COMMON ORAL JUDGEMENT

Present orders shall govern the disposal of these two Criminal Appeals filed by the State of Gujarat. In Criminal Appeal No.. 280 of 1990 the Respondent Digvijaysinh Chauhan came to be acquitted of the offence punishable under section 498A and 114 I.P. Code by the Ld. JMFC, Lunavada in Criminal Case No. 496 of 1988, under the orders dated January 16, 1990. In Criminal Appeal No. 281 of 1990 the Respondents Tijiba and Nanduba came to be acquitted of the offence punishable under section 498 (A) read with Section 114 I.P. Code by Ld. JMFC, Lunavada in C.C. No. 1204 of 1988, under the orders dated January 16, 1990. The said orders have been brought in challenge in the present Appeal by the Appellant State.

Respondent accused Digvijaysinh Chauhan happen to be the husband of deceased Lilaba, while the Respondents accused Tijiba and Nanduba were the relations of the accused Digvijaysinh. It was the case of the prosecution that, Lilaba, the wife of the Respondent accused Digvijaysinh had delivered a baby daughter and that, Respondents accused belonging to a particular community were not happy with the birth of a female child and therefore deceased Lilaba was being subjected to mental and physical cruelty, and ultimately Lilaba was obliged to commit suicide. The Court below has not accepted the case of the prosecution on the ground that, though it appeared from the evidence that Lilaba had died a death by falling in the well and though the above said act on the part of deceased Lilaba could be said to be a suicide, there was no evidence to come to the conclusion that, either the husband or the relatives of the husband of the deceased Lilaba were guilty of cruelty towards her. It appears that, regard being had to the evidence on record, this view was permissible and was justifiable also. The evidence, for both the cases being common, shows that, Lilaba, the deceased had delivered a female daughter before about 1 1/2 years and later on she had reverted to the matrimonial house, but once again when the infant child was not keeping well, she had gone to the house of her father. Later on once again she had gone back to her matrimonial house. The evidence of the prosecution witnesses residing in the vicinity would go to show that, according to one theory the deceased Lilaba was suffering from high fever and was under treatment of a local compounder. Any how, other part of the evidence would go to show that the deceased had fallen in the well and died a suicidal death. But it appears that, as has

been rightly pointed out by the Court below, there was no evidence of cruelty which would ultimately lead the deceased to commit suicide. It should not be overlooked that, the female child was born to the deceased Lilaben before about 1 1/2 years and later on two occasions she had gone to her father's house. In the same way she was received in the matrimonial house on two occasions according to the caste custom, and accepting the say of the prosecution that she had delivered a female child, there is no evidence which would go to support the case of the prosecution regarding cruelty. In view of this, it appears that the Court below was justified in coming to the conclusion that the cruelty aspect was not established by the prosecution. In my opinion therefore Ld. trial Court was justified in recording the orders of acquittal. The present two appeals therefore filed by the State require to be dismissed. They are hereby accordingly dismissed. The orders of acquittal pronounced by the Court below in both the appeals are hereby upheld and confirmed.

/vgn.